



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

Mark A. Perry
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, NW
Washington, DC 20036

MAR - 2 2007

RE: MUR 5899
New York Bankers Association Community
PAC f/k/a/ CBANYS PAC and Karen
Jannetty, in her official capacity as treasurer

Dear Mr. Perry:

On August 21, 2006, you notified the Federal Election Commission of the possibility of violations by your clients, New York Bankers Association Community PAC f/k/a/ CBANYS PAC, and Karen Jannetty, in her official capacity as treasurer, of certain sections of the Federal Election Campaign Act of 1971, as amended. On February 6, 2007, the Commission, after considering all the evidence, determined that a Matter Under Review (MUR) should be opened. On this same date, the Commission dismissed this matter and closed the file. The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). If you have any questions, please contact Audra Wassom, the attorney assigned to this case, at (202) 694-1650.

Sincerely,

Thomasenia P. Duncan
Acting General Counsel

A handwritten signature in black ink, appearing to read "Rhonda J. Vosdingh".

BY: Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: NYBA Community PAC
f/k/a CBANYS PAC and
Karen Jannetty, in her official
capacity as treasurer.

MUR: 5899

I. INTRODUCTION

New York Bankers Association ("NYBA") and one of its separate segregated funds, NYBA Community PAC f/k/a CBANYS PAC and Karen Jannetty, in her official capacity as treasurer ("the PAC"), submitted the results of an internal audit in order to address certain problems discovered in the operation of the PAC from a time prior to NYBA's acquisition of the PAC's former connected organization. The Respondents' submission revealed four potential violations of the Federal Election Campaign Act of 1971, as amended ("the Act"): (1) solicitation of contributions outside the restricted class in violation of 2 U.S.C. § 441b(b)(4) and 11 C.F.R. § 114.5(g)(1); (2) failure to maintain copies of written consents from members of a trade association to solicit the restricted class of those members for the required time period in violation of 11 C.F.R. § 114.8(c),(d); (3) failure to reimburse the connected organization for certain costs paid by the connected organization for a raffle fundraiser in violation of 11 C.F.R. § 114.5(b)(2); and (4) allowing an individual who was not a "member" of the trade association, but was part of a member's restricted class, to purchase a ticket to a fundraising event for an administrative fund used for PAC-related expenses.

Based on the reasons outlined below, the Commission opened a MUR and exercised its prosecutorial discretion to dismiss this matter.

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II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The New York Bankers Association (“NYBA”) is an incorporated trade association. NYBA acquired the assets of another trade association, the Community Bankers Association of New York (“CBANYS”), including its political action committee, which was then known as CBANYS PAC but was renamed NYBA Community PAC (“the PAC”). On the date of its acquisition, the PAC had \$108,008.66 in cash on hand. The PAC has made no contributions or other disbursements, raised no funds (other than interest on the bank account), and conducted no operations since the acquisition, and plans to terminate upon resolution of this matter.¹

The PAC received a Request for Additional Information (“RFAI”) from the Commission’s Reports Analysis Division (“RAD”) about a particular contribution it received and thereafter decided to conduct a comprehensive review of the former CBANYS PAC.² In the course of that review, “NYBA discovered certain irregularities in CBANYS PAC’s solicitation efforts, and has been unable to establish that all funds held by the current NYBA Community PAC were contributed in accordance with all of the technical requirements of applicable federal

¹ NYBA indicated in its submission that it intends to transfer the PAC’s remaining funds (after making any appropriate refunds or forfeitures) to affiliated committees prior to terminating. Prior to the acquisition of CBANYS’s assets and PAC, NYBA maintained its own separate segregated fund, the New York Bankers Association PAC (“NYBA PAC”). NYBA intends to continue NYBA PAC but wishes to terminate NYBA Community PAC f/k/a CBANYS PAC. The two PACs have not been combined and none of NYBA Community PAC’s funds have been transferred to or commingled with the funds of NYBA PAC. The two PACs list each other as affiliates but remain separate and distinct. Karen L. Jannetty was and still is the treasurer of NYBA PAC. Upon the acquisition of CBANYS PAC, Ms. Jannetty also became the treasurer of that PAC, now known as NYBA Community PAC. She was not the treasurer of CBANYS PAC at the time the potential violations of the Act occurred.

² The reporting issue addressed in the RFAI is completely unrelated to the results of the internal audit the PAC has submitted to the Commission and was appropriately addressed by the PAC in a response to the RFAI. That issue is not discussed in this Report.

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law.” See Aug. 21, 2006 Submission from NYBA. Respondents assert that “none of the issues described below has recurred since CBANYS PAC became NYBA Community PAC and its operations came under NYBA management.” *Id.*

B. Discussion

The Act prohibits corporations from making any contribution or expenditure in connection with a Federal election. 2 U.S.C. § 441b(a). The Act states, however, that the term “contribution or expenditure” does not include “the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.” 2 U.S.C. § 441b(b)(2)(C).³

Under 2 U.S.C. § 441b(b)(4)(A)(i), a corporation, or a separate segregated fund (“SSF”) established by a corporation, may solicit contributions to such a fund only from its stockholders and their families and its executive and administrative personnel and their families. However, exceptions set forth in 2 U.S.C. §§ 441b(b)(4)(C) and (D) allow a membership organization, or its SSF, to solicit contributions from the members of such organization, and a trade association, or its SSF, to solicit “contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders or personnel to the extent such solicitation of such stockholders and personnel, and

³ A “membership organization” is defined in part as a “trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization” that: “(i) expressly provides for ‘members’ in its articles and bylaws; (ii) expressly solicits members; and (iii) expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.” 11 C.F.R. § 114.1(e)(1)(i), (iv), and (v); AO 1995-28.

their families, has been separately and specifically approved by the member corporation involved.”⁴

1. Solicitation of Contributions Outside the Restricted Class

The first potential violation of the Act discussed in the submission is the PAC’s apparent solicitation of contributions from individuals outside the PAC’s restricted class. CBANYS had both voting members and “associate members.” The so-called associate members were dues-paying members who included some, but not all, of the trade association’s vendors.⁵

CBANYS sponsored an annual convention attended by both classes of members and a few representatives from non-member vendors. The PAC engaged in fundraising at the conventions by having a booth at the convention sites and selling tickets for a raffle. The PAC also sent flyers to the CEO of every CBANYS member bank and both member and some non-member vendors enclosing three raffle tickets for purchase. The flyer mistakenly stated that

⁴ Commission regulations define the term “members.” Under 11 C.F.R. § 114.1(e)(2), “members” means all persons who are currently satisfying the requirements for membership in a membership organization, who affirmatively accept the membership organization’s invitation to become a member, and who meet one of the following requirements: (i) have some significant financial attachment to the membership organization, such as a significant investment or ownership stake (but not merely the payment of dues); (ii) are required to pay on a regular basis a specific amount of dues that is predetermined by the organization and are entitled to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership organization, or for those who select at least one member of those on the highest governing body of the membership organization; or (iii) are entitled to vote directly for all of those on the highest governing body of the membership organization. The regulations also provide that the Commission “may determine, on a case by case basis, that persons who do not precisely meet the requirements on the general rule, but have a relatively enduring and independently significant financial or organizational attachment to the organization, may be considered members” 11 C.F.R. § 114.1(e)(3). *See also* AO 1995-28.

⁵ Although Respondents assert that CBANYS was a membership organization, they included both voting members and “associate members.” The available information is not sufficient to determine whether or not the “associate members” qualify as “members” for the purpose of PAC solicitations. Given that the existence of possible violations is not dependent on whether the “associate members” qualify as “members” for purposes of PAC solicitations, and because the PAC is being closed down, there is no need to reach this issue.

“Tickets can be sold to family, friends, or colleagues,” perhaps leading to the purchase of tickets by some non-members.

The PAC, as the SSF of a membership organization that is also a trade association, could permissibly solicit contributions from the stockholders and executive and administrative personnel, and their families, of CBANYYS’s members. *See* 2 U.S.C. §§ 441b(b)(4)(C) and (D). The PAC, however, appears to have solicited contributions from outside its restricted class when it sent the mailing to all attendees of its annual conventions in 2003 and 2004, which included representatives from vendors that were not members of CBANYYS, advertising the sale of the fundraising raffle tickets.⁶

The raffle tickets cost \$20 each and were reported by the PAC as unitemized contributions. Many of the tickets were purchased with cash, and even “some of the contributors who purchased tickets by check have not been verified as members of the solicitable class.”⁷ The 2003 raffle raised \$9,410, of which only \$1,700 could be verified as contributed by individuals within the restricted class. The 2004 raffle raised \$8,140, of which only \$850 could be verified as contributed by individuals within the restricted class. Therefore, \$15,850 in raffle receipts (of which \$9,070 was contributed in cash) cannot be verified as contributed by

⁶ Speakers at the convention also reportedly urged attendees, including the representatives of non-member vendors, to visit the PAC’s booth. A bucket was also passed to allow attendees to make purchases of raffle tickets during convention events.

⁷ Respondents stated that to attempt to determine whether contributors were members of the solicitable class, they checked the records of the PAC against the names on checks used to purchase raffle tickets, but that the records of the PAC only included executives of member organizations. The records did not include administrative personnel within the restricted class. Respondents also looked at any checks used to purchase raffle tickets to see if an affiliation was noted on the check. Respondents indicated that administrative personnel change jobs frequently, therefore they had not gone to former members of CBANYYS to ask them to check past employment records for administrative personnel.

individuals within the restricted class. NYBA states that it also cannot establish that any part of that amount actually was contributed by individuals outside the restricted class.

Although Respondents appear to have violated 2 U.S.C. § 441b(b)(4)(A)(i) by soliciting contributions from individuals outside the PAC's restricted class, the Commission has decided to dismiss this matter.

2. Failure to Retain Written Consents to Solicit

The Act requires solicitations made by trade associations to the stockholders, executive and administrative personnel, and families of the trade association's members to be "separately and specifically approved by the member corporation involved." 2 U.S.C. § 441b(b)(4)(D); 11 C.F.R. § 114.8(d)(1). The Commission's regulations also require the trade association to retain a copy of each approved request "for three years from the year for which the approval is given." 11 C.F.R. § 114.8(d)(2).

Although the PAC appears to have had a regular practice of obtaining the consents, the PAC did not retain all of its members' written consents to solicit from the 2003-2005 period. Thus, NYBA has been unable to establish whether the PAC obtained written consents from all members whose personnel were solicited during the period 2003-2005. The PAC, however, did retain some written consents, maintained an incomplete chart of members who had submitted consents, and retained some copies of thank-you notes that were sent to members who submitted their written consents. After a review of all those files, NYBA determined that written consents (and any evidence thereof) are missing entirely for two members in 2003, seven members in 2004, and ten members in 2005. NYBA stated that itemized contributions from individuals

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within the restricted class associated with those members totaled \$17,145 for the 2003-2005 period.⁸ In addition, there are 24 other members for which the PAC cannot find the actual written consents to solicit but for which the PAC has evidence that they were obtained in the form of copies of thank-you notes sent to the members after the consents were received. The total amount contributed by individuals associated with those members for the 2003-2005 period was \$28,190.

Although Respondents appear to have violated 2 U.S.C. § 441b(b)(4)(D) and 11 C.F.R. § 114.8(d)(1) by failing to obtain written consents to solicit and 11 C.F.R. § 114.8(d)(2) by failing to maintain some written consents for the required three-year period, the Commission has decided to dismiss this matter.

3. The Raffle Prizes Contributed by CBANYS and The “One-Third Rule”

The Commission’s regulations permit a membership organization to use general treasury monies “for the establishment, administration, and solicitation of contributions to its separate segregated fund.” 11 C.F.R. § 114.5(b). To solicit contributions for the SSF, the membership organization may “utilize a raffle or other fundraising device which involves a prize, so long as State law permits and the prize is not disproportionately valuable.” 11 C.F.R. § 114.5(b)(2). “When using raffles or entertainment to raise funds, a reasonable practice to follow is for the separate segregated fund to reimburse the [membership organization] for costs which exceed one-third of the money contributed.” *Id.*

⁸ It is also possible that some raffle tickets at the annual conventions in 2003 and 2004 were purchased by individuals within the restricted class associated with members for which the PAC did not have or maintain written consents to solicit. Because those purchases were unitemized, however, NYBA cannot verify whether the PAC had written consents to solicit for all the people who purchased tickets.

NYBA's submission indicates that in 2003 and 2004 the PAC did not follow the "one-third rule" for the allocation of the costs of raffle prizes between the PAC and CBANYS. *See* Aug. 21, 2006 Submission from NYBA. CBANYS contributed the raffle prizes in both years and the prizes each year were worth a total of \$3,500. In 2003, the raffle raised \$9,410, and in 2004, the raffle raised \$8,140. The PAC did not reimburse CBANYS any amount in consideration for CBANYS contributing the raffle prizes.

Although 11 C.F.R. § 114.5(b)(2) includes the "one-third rule" as a "reasonable practice," the PAC did not reimburse its connected organization for any of the costs associated with the raffle. The PAC should have reimbursed CBANYS \$364 following the 2003 raffle and \$787 following the 2004 raffle for the costs of the raffles which exceeded one-third of the money contributed. As discussed below, the PAC has transferred the total amount of \$1,151 to CBANYS, which is in the process of winding down, to correct this problem.

Although Respondents appear to have violated 11 C.F.R. § 114.5(b)(2) by failing to reimburse the connected organization for the costs of the raffles which exceeded one-third of the money contributed, the Commission has decided to dismiss this matter.

4. An Individual Executive's Contribution to the PAC's Administrative Fund

The Act provides that while corporations and labor organizations are prohibited from making contributions or expenditures in connection with any Federal election, they are permitted to establish SSFs to be used for political contributions and expenditures. The Act specifically exempts from the definition of "contribution or expenditure" contained in 2 U.S.C. § 441b those costs incurred by a corporation, labor organization, membership organization, cooperative or

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corporation without capital stock, to establish, administer, and solicit contributions to a SSF.

2 U.S.C. § 441b(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii).

A corporate member of a trade association may donate funds to the trade association to help defray administrative costs of the association's PAC without violating the prohibition against corporate contributions in 2 U.S.C. § 441b. *See* AOs 1980-59, 1982-36, 1986-13, 1992-20, 1995-17, 1995-28. However, the funds must be donated to the trade association or an administrative fund controlled by the trade association, and not by the PAC itself, for the purpose of defraying the administrative expenses of its PAC. *See* AOs 1980-59 and 1982-61.

Separate segregated funds may accept contributions from persons otherwise permitted by law to make contributions. 11 C.F.R. § 114.5(j). However, the Commission has interpreted its regulations to mean that an individual who is not a member of a trade association may not pay the solicitation costs of a SSF, "since the individuals could not be said to be providing support to their own trade association of which they were a member." AOs 1995-17 and 1989-18. Therefore, any donations by an individual who is not a member of a trade association must be treated as contributions to the SSF and reported as such and are subject to the Act's contribution limits. *See* AO 1989-18.

NYBA states in its submission that the PAC advertised a "Delegates' Scramble PAC Golf Tournament" to attendees of the annual conventions. The publicity materials stated that proceeds from the \$50 ticket sales would benefit "CBANYS' Political Action Committees." The proceeds from the golf outing went to the PAC's administrative fund. The administrative fund was used for the PAC's "solicitation and administration expenses and not for federal election

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activity.” The administrative fund was an account controlled by CBANYS. Therefore, the tickets were permissibly purchased directly by CBANYS’s members.

NYBA contends the publicity materials for the golf outing were ambiguous and as a result an individual executive of a CBANYS member purchased a ticket. NYBA further contends that “because this individual was not personally a member of CBANYS and therefore was not permitted to pay for the PAC’s administrative expenses by contributing to the administrative fund, the contribution was treated as a contribution to the PAC and reported accordingly.” See Aug. 21, 2006 Submission from NYBA. Although the individual could not permissibly pay for the PAC’s solicitation and administrative expenses by contributing to the administrative fund, it appears the contribution was appropriately handled and treated as a contribution to the PAC and reported as such.

Therefore, the Commission has decided to dismiss this matter.

C. Conclusion

The Commission has decided to dismiss this matter and close the file for the following reasons. First, all of the violations appear to have occurred before NYBA acquired the assets of CBANYS, including the PAC. No violations appear to have occurred after NYBA’s acquisition of the PAC.⁹ Second, NYBA initiated a full and comprehensive review of CBANYS PAC once it was made aware of the RFAI from RAD, which NYBA promptly addressed. NYBA voluntarily made the results of that review available to the Commission and indicated its willingness to work with the Commission to appropriately address the issues uncovered in its

⁹ NYBA already had its own PAC, NYBA PAC, which it intends to maintain, but NYBA wishes to terminate the PAC that is the Respondent in this matter which it acquired from CBANYS.

review of the PAC so that it may then terminate the PAC. NYBA asserts that none of the problems addressed in its submission has recurred since the PAC came under NYBA management, and the Commission has no information to the contrary.

Significantly, NYBA has taken corrective action to the extent possible to address the problems uncovered in its review of the PAC. After discussions with a RAD analyst, the PAC determined the percentage of non-members that attended the 2003 and 2004 CBANYS conventions and took that percentage of the raffle proceeds from those conventions and disbursed that amount to a charity to mitigate for any non-members that were impermissibly solicited by the PAC. Respondents have also made the appropriate disbursement of \$1,151 to CBANYS (which is in the process of winding down) under the "one-third rule" to appropriately reimburse CBANYS for the donated raffle prizes used at the 2003 and 2004 conventions. Finally, Respondents have refunded the \$50 contribution to the individual executive who purchased a ticket to the golf outing to benefit the PAC's administrative fund. Respondents have stated that all such actions will be reflected on the PAC's 2006 Year-End Report.

For all of the above reasons, the Commission has decided to dismiss this matter and close the file.

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